

§ 556.13 Receipt of interest expressed as a percentage of other income.

(a) With limited exceptions, Federal savings associations lack the statutory authority to acquire an equity interest either in real estate or in a corporation. Accordingly, Federal savings associations cannot, as part of a loan transaction, acquire an ownership interest in the security property or in a corporate borrower. The issue has arisen as to whether the receipt of a share of the income generated by the security property or of a corporate borrower, or any similar participation with the borrower in the loan project, necessarily constitutes an unauthorized acquisition of an equity interest.

(b) The Office has determined that the receipt of such income or the right to receive income should not be considered an equity interest if it in substance constitutes no more than a part of the compensation received for the use of the Federal savings association's funds. Accordingly, if the borrower has an unconditional obligation to repay the loan principal, and if a Federal savings association receives a substantial payment of interest calculated periodically as a percentage of the outstanding principal loan balance, it may receive additional interest calculated on the basis of the income from or the appreciation of the security property, the income of a corporate borrower, or some other measure of a venture's success. The means by which a Federal savings association calculates its share of the income is not a material consideration in determining whether the share constitutes an equity interest in the property.

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Subpart A—General**§ 557.1 What does this part do?**

This part applies to the deposit activities of savings associations. If you are a federal savings association, subpart B of this part applies to your deposit activities. Subpart C of this part applies to the deposit activities of all federal and state-chartered savings associations.

Subpart B—Deposit Activities of Federal Savings Associations**§ 557.10 What authorities govern the issuance of deposit accounts by a federal savings association?**

A federal savings association ("you") may raise funds through accounts and may issue evidence of accounts under section 5(b)(1) of the HOLA (12 U.S.C. 1464(b)(1)), your charter, and this part. Additionally, 12 CFR parts 204 and 230 apply to your deposit activities.

§ 557.11 To what extent does Federal law preempt deposit-related State laws?

(a) Under sections 4(a) and 5(a) of the HOLA, 12 U.S.C. 1463(a), 1464(b), OTS is authorized to promulgate regulations that preempt State laws affecting the operations of Federal savings associations when appropriate to:

(1) Facilitate the safe and sound operations of federal savings associations;

(2) Enable federal savings associations to operate according to the best thrift institutions practices in the United States; or

(3) Further other purposes of HOLA.